Communications Workers of America AFL-CIO, CLC

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August 21, 2012

## BY ELECTRONIC FILING

Marlene H. Dortch, Secretary Federal Communications Commission 445 Twelfth Street, S.W. Washington, DC 20554

Re: Applications of Cellco Partnership d/b/a Verizon Wireless, SpectrumCo, LLC, and Cox TMI Wireless, LLC for Consent to Assign Wireless Licenses WT Docket No. 12-4

Dear Ms. Dortch:

On August 17, Debbie Goldman, Telecommunications Policy Director of the Communications Workers of America ("CWA"), communicated with David Goldman, legal advisor to Commissioner Jessica Rosenworcel, in the above-captioned proceeding. On August 20, Debbie Goldman communicated with Louis Peraertz and Dave Grimaldi, Legal Advisors to Commissioner Mignon Clyburn. This letter summarizes the content of those communications.

Ms. Goldman emphasized that the Commission's public interest standard is broader than the Department of Justice statutory framework for evaluating the proposed transaction. The Commission employs a balancing test that weighs "any potential public interest harms of the transaction against any potential public interest benefits." In conducting its public interest analysis, the Commission takes into account the "broad aims of the Communications Act," which include, among other things, accelerating private sector deployment of advanced services.

As CWA has repeatedly demonstrated, the proposed transaction would result in considerable public interest harm to cross-platform competition, private sector deployment of advanced services, job creation, consumer choice, and result in higher prices and reduced quality service. <sup>2</sup> Therefore, it is incumbent upon the Commission, if it decides to approve the above-captioned transaction, to go beyond the remedies in the U.S. Department of Justice ("DOJ")

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<sup>&</sup>lt;sup>1</sup> Applications of AT&T Inc. and Centennial Communications Corp. For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Leasing Agreements, 24 FCC Rcd at 13927 ¶ 27 (2009) <sup>2</sup> See Comments of Communications Workers of America and International Brotherhood of Electrical Workers, Applications of Cellco Partnership d/b/a Verizon Wireless, SpectrumCo, LLC, and Cox TMI Wireless, LLC for Consent to Assign Wireless Licenses, WT Docket No. 12-4 (Feb. 21, 2012) ("CWA/IBEW Comments"); Reply Comments of CWA/IBEW, WT Docket No. 12-4 (March 26, 2012) ("CWA/IBEW Reply Comments"); CWA Comments on the Impact of Verizon Wireless and T-Mobile to Assign AWS-1 Licenses on the Verizon Wireless/SpectrumCo/Cox Transactions,,WT Docket 12-4 (July 10, 2012) ("CWA Comments dated July 10, 2012").

Proposed Final Judgment.<sup>3</sup> Ms. Goldman pointed out that the Proposed Final Judgment contains numerous analytic inconsistencies, loopholes, and omissions which weaken, and in some cases, subvert the consumer protections.

Ms. Goldman emphasized that the Commission has the obligation to close the loopholes and gaps in the Proposed Final Judgment with the following conditions to preserve and protect the public interest:

1. Consistent with Commission action in past transactions and consistent with Verizon's stated commitments regarding FiOS, require Verizon to expand in-region FiOS deployment. CWA continues to urge the Commission to require Verizon to continue to expand in-region deployment to cover at least 95 percent of residential living units and households within the Verizon in-region territory, and require that a certain percentage of incremental deployment be to rural areas and low-income living units, with timetables, data reporting, and penalties for non-compliance. This is consistent with Verizon's recent statements to the Commission, in which it confirmed that it is "committed to FiOS," and that FiOS is "an important growth engine for the company."

At a minimum, the Commission should require Verizon to expand FiOS deployment to two million households beyond the current "FiOS Footprint" by December 2016. In evaluating past transactions, the Commission has noted that it weighs the public interest harm that will result from the transaction against the countervailing public interest benefit. The greater the public interest harm, the more the Commission must find countervailing public interest benefits. In at least six recent transactions -- the AT&T/BellSouth merger (2007), the CenturyTel/Embarq merger (2009), the Frontier/Verizon sale (2010), the Qwest/CenturyTel merger (2011), the Verizon/America Mobil sale (2007), and the GTE/Puerto Rico Telephone Company merger (1999)-- the Commission concluded that the Applicants' commitments to expand broadband deployment represented a significant transaction-related public interest benefit and served to offset transaction-related public interest harms.<sup>5</sup>

Because the proposed Transaction poses significant public interest harm, the Commission should seek substantial commitments by Verizon Communications to expand its FiOS network beyond the areas in which it has existing franchise agreements to build FiOS. This remedy will

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<sup>&</sup>lt;sup>3</sup> [Proposed] Final Judgment, United States of America and State of New York, Plaintiffs, v. Verizon Communications Inc., Cellco Partnership d/b/a/ Verizon Wireless Comcast Corp., Time Warner Cable Inc., Cox Communications, Inc., and Bright House Networks, LLC, Defendants. Case 1:12-cv-01254, Document 2-1, filed Aug. 16, 2012 ("Proposed Final Judgment"); Stipulation and Order, United States of America and State of New York, Plaintiffs, v. Verizon Communications Inc., Cellco Partnership d/b/a/ Verizon Wireless Comcast Corp., Time Warner Cable Inc., Cox Communications, Inc., and Bright House Networks, LLC, Defendants. Case 1:12-cv-01354, Document 2, filed Aug. 16, 2012 ("Stipulation").

<sup>&</sup>lt;sup>4</sup> Letter from Kathleen Grillo, Verizon to Marlene H. Dortch, WT Docket Nos. 12-4 and 12-175, Aug. 21, 2012.

<sup>&</sup>lt;sup>5</sup> See, AT&T and BellSouth Corporation Application for Transfer of Control, Memorandum Opinion and Order, 22 FCC Rcd 5662, App. F (2007); In the Matter of Applications filed by Qwest Communications International Inc. and CenturyTel, Inc. d/b/a/ CenturyLink for Consent to Transfer Control, Memorandum Opinion and Order, WC Docket No. 10-110 (App. C) (March 18, 2011); In the Matter of Applications Filed by Frontier Corporation and Verizon Communications, Inc. for Transfer of Control, Memorandum Opinion and Order, WC Docket No. 09-95 (App. C) (May 21, 2012); In the Matter of Applications Filed for Transfer of Control of Embarq Corporation to CenturyTel, Inc., Memorandum Opinion and Order, WC Docket No. 08-238, (App. C) (June 25, 2009); Verizon/America Movil Order, WT No. 06-113, March 26, 2007 (rel)., para 36; GTE/PRTC Order, 14 FCC Rcd at 3545-49, para. 50-59;

promote cross-platform competition and further the goals of the Communications Act and the National Broadband Plan to expand deployment of high-speed broadband services. This remedy will also address the disparate impact that Verizon's current deployment has on cities including Boston, Buffalo, Baltimore, Albany, and Syracuse where Verizon has deployed FiOS in the more affluent suburbs ringing these cities, but not in the cities themselves with lower-income, more heavily minority population. Finally, it will incent network investment and create good jobs.

**2. Make the cross-marketing prohibition consistent and enforceable.** The DOJ Proposed Final Judgment prohibits cross-marketing in the FiOS Footprint but allows cross-marketing in the DSL Footprint for the next four years. The Proposed Final Judgment also allows broad exemptions that significantly weaken, if not eviscerate, the impact of the cross-marketing prohibition in the FiOS Footprint. The Commission should expand the cross-marketing ban to include the DSL Footprint and should eliminate the exemptions.

The DOJ engages in an analytic error by effectively excluding DSL from its definition of "residential broadband services." The DOJ identifies "residential broadband services" as one of the relevant markets that this transaction impacts. The DOJ then explains that "[t]he Commercial Agreements…harm competition in the video, broadband, and wireless markets because they impair the ability and incentives for Verizon and the Cable Defendants to compete aggressively against each other." But then the DOJ inexplicably excludes DSL from its competitive analysis by adopting a remedy that allows cross-marketing in the DSL Footprint.

The Commission must not replicate this error. The Commission categorizes DSL as a broadband service. <sup>11</sup> Verizon has 3.6 million DSL subscribers in addition to its 5.1 million FiOS Internet subscribers. <sup>12</sup> In order to maintain cross-platform competition (Verizon's copper-network DSL and voice services currently compete against the MSO's broadband and voice offerings) and

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<sup>&</sup>lt;sup>6</sup> See Letter from Monica S. Desai, Counsel to Communications Workers of America, to Ms. Marlene H. Dortch, WT Docket No. 12-4, May 31, 2012; Letter from Debbie Goldman to Ms. Marlene H. Dortch, WT Docket No. 12-4, June 15, 2012 with Attachment, "Verizon/Cable Deal: Slamming the Door on Our High-Speed Future."

<sup>&</sup>lt;sup>7</sup> Letter from Monica S. Desai, Counsel to Communications Workers of America, to Ms. Marlene H. Dortch, WT Docket No. 12-4, July 10, 2012, Attachment A, Helene Jorgensen, "Employment Impact of Investment in the Fiber-to-the-Premise Network."

<sup>&</sup>lt;sup>8</sup> Proposed Final Judgment, Section V.A and V.B.

<sup>&</sup>lt;sup>9</sup> The other product markets are video services and mobile wireless telecommunications services. *See* Competitive Impact Statement, United States of America and State of New York, Plaintiffs, v. Verizon Communications Inc., Cellco Partnership d/b/a/ Verizon Wireless Comcast Corp., Time Warner Cable Inc., Cox Communications, Inc., and Bright House Networks, LLC, Defendants. Case 1:12-cv-01354, Document 3, filed Aug. 16, 2012 ("Competitive Impact Statement"), pp. 9-10.

Competitive Impact Statement, p. 13.

<sup>11</sup> The Commission benchmarked broadband as a transmission service that enables an end user actually to download Internet content at 4 megabits per second (mbps) and to upload Internet constant at 1 mbps over the service provider's network. See Inquiry Concerning the Deployment of Advanced Telecommunications Capacity to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, Amended by the Broadband Data Improvement Act, GN Docket Nos. 09-137, 09-51, Report, 25 FCC Rcd 95560, 9563, para. 11 (2010) (Sixth Broadband Deployment Report). The Commission adopted a minimum broadband speed benchmark for Connect American Fund recipients of 4 Mbps downstream and 1 Mbps upstream. See Report and Order and Further Notice of Proposed Rulemaking, In the Matter of Connect America Fund, WC Docket No. 10-90, Nov. 18, 2011 (rel), para 94.

<sup>&</sup>lt;sup>12</sup> Verizon Communications Inc. 2Q12 Selected Operating Statistics, available at http://www22.verizon.com/idc/groups/public/documents/adacct/2012\_q2\_foi\_xls.xls

to preserve incentives for Verizon to continue build-out of its FiOS network, the Commission must apply the cross-marketing prohibitions to the DSL Footprint as well as the FiOS Footprint.

At a minimum, the Commission should prohibit cross-marketing throughout the entire Designated Market Areas (DMA) in which a portion of the DMA includes areas in which Verizon has already deployed or has committed to deploy FiOS. This condition will at least eliminate any transaction-related disincentives for Verizon to expand its FiOS build to the non-FiOS "doughnut" hole cities ringed by FiOS-deployed suburbs. <sup>13</sup> It will also preserve competition between Verizon's copper-based DSL/voice services and those of the MSO, facilitate enforcement of the cross-marketing prohibition since it will apply in a contiguous media market, and leave open the opportunity for Verizon to do the right thing to close the digital divide by expanding its FiOS deployment from the suburbs to our cities.

The DOJ Proposed Final Judgment Section V.C. includes three loopholes that limit, if not eviscerate, the prohibition against cross-marketing in the FiOS footprint. The Commission should eliminate these exemptions.

- First, the Proposed Final Judgment allows Verizon Wireless to "market Cable Services in national or regional advertising that may reach or is likely to reach street addresses in the FiOS Footprint or DSL Footprint," provided the advertising does not specifically target Cable Services in the FiOS Footprint...<sup>14</sup> This exemption highlights the point that we have made: to be effective, a cross-marketing prohibition must include at a minimum an entire metropolitan region (often defined as a Designated Market Area, or DMA). The Commission should eliminate this exemption.
- Second, the Proposed Final Judgment would allow Verizon Wireless to "service, provide, and support Verizon Wireless Equipment sold by a Cable Defendant." In effect, an MSO could sell a Verizon Wireless product to a customer in the FiOS Footprint, and then the customer could go to a Verizon Wireless store in the FiOS Footprint to obtain, service, or repair the equipment. This loophole makes it possible for VZW and the MSOs to cross-market in the FiOS Footprint. The Commission should eliminate this exemption.
- Third, the Proposed Final Judgment allows Verizon Wireless to "provide information regarding the availability of Cable Services" provided it is not compensated for providing this information. The Commission should eliminate this exemption.

The Proposed Final Judgment Section IV.C. includes internally contradictory language that results in the unintended consequence of prohibiting the sale of a Verizon quad play bundle. The first sentence in Section IV.C. appropriately requires the Defendants ("Applicants") to amend the Commercial Agreements "so that there is unambiguously no restriction on Verizon Wireless' (VZW) ability to authorize, permit, or enable Verizon Telecom (VZT) to sell a Verizon Wireless Service in combination with VZT Services or any Person's Broadband Internet, telephony, or Video Programming Distribution service." The next sentence then eviscerates this requirement with language that says "the Commercial Agreements may prohibit Verizon Wireless from

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<sup>&</sup>lt;sup>13</sup> See Letter from Monica S. Desai, Counsel to Communications Workers of America, to Ms. Marlene H. Dortch, WT Docket No. 12-4, May 31, 2012; Letter from Debbie Goldman to Ms. Marlene H. Dortch, WT Docket No. 12-4, June 15, 2012 with Attachment, "Verizon/Cable Deal: Slamming the Door on Our High-Speed Future."

<sup>&</sup>lt;sup>14</sup> Proposed Final Judgment, Section V.C.

initiating or marketing such a combined sale." <sup>15</sup> In order to make the requirement in the first sentence meaningful, the Commission should eliminate the second sentence.

The cross-marketing prohibition should apply to both VZW and the MSOs. This condition is necessary to preserve head-to-head competition. For example, if the MSOs, but not VZW, were allowed to sell a cable/VZW bundle, the parties could still reduce cross-platform competition by channeling the sale of the cable/VZW bundle through the MSO sales channel.

**3. Reporting Requirements.** The Commission should impose reporting requirements in order to monitor the impact on consumers of the cross-marketing agreements. The Proposed Final Judgment requires reporting on Verizon Wireless sales of cable services, Verizon Telecom services, Verizon build-out of FiOS services and related costs, and DSL subscribers and revenues, and Joint Operating Entity ("JOE") technology developments. <sup>16</sup>

The Commission should supplement these reporting requirements with information about Verizon capital and operating expenses devoted to FiOS and DSL services by wire center (DSL and FiOS), franchise area (FiOS), and state and non-management employment levels by wire center and state. This information is necessary to monitor Verizon's investment in FiOS and DSL, including adequate staffing to provide quality service to customers.

## 4. Close Loopholes in the JOE Conditions

The Commission should eliminates the exemptions in the JOE conditions that otherwise would limit, if not subvert, the intended pro-competitive protections in the Proposed Final Judgment. Specifically, the Commission should require government review of *all* contracts between the Applicants related to "sale of VZT Services, the sale of Verizon Wireless Services, the sale of Cable Services, or the joint development of technology or services" by eliminating the exemptions in Section V.I. In addition, the Commission should eliminate all exemptions in Section V.J. from the otherwise appropriate prohibition against collaboration between VZT and a MSO Applicant.<sup>17</sup>

Sincerely,

Debbie Goldman

Communications Workers of America

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cc: David Goldman

Louis Peraertz Dave Grimaldi

<sup>17</sup> Proposed Final Judgment, Section V.I. and V.J.

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<sup>&</sup>lt;sup>15</sup> Proposed Final Judgment, Section IV.C.

<sup>&</sup>lt;sup>16</sup> Proposed Final Judgment, Appendix A - Period Reports, pages 23-25.